

Ordinance No. 2500 Summary

On October 15, 2020, the City of De Soto, Kansas, adopted Ordinance No. 2500, amending Article 13 of Chapter I related to the City's policies and procedures on economic incentives available from the City for various development and redevelopment within the City.

A complete copy of this ordinance is available at www.desotoks.us or at City Hall, 32905 West 84th Street, De Soto, Kansas. This summary is certified by Patrick G. Reavey, City Attorney.

ORDINANCE NO. 2500

AN ORDINANCE AMENDING ARTICLE 13 OF CHAPTER I OF THE CITY CODE TO UPDATE THE CITY'S POLICIES AND PROCEDURES RELATED TO ECONOMIC INCENTIVES AVAILABLE FROM THE CITY

WHEREAS, after extensive study and input from the Economic Development Committee, the Governing Body believes it is prudent to amend and enhance the City's policies and procedures related to Economic Development Incentives to more closely align with the goals and objectives of the City's Strategic and Comprehensive Land Use Plans.

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF DE SOTO, KANSAS:

SECTION 1: Article 13 of Chapter I of the City Code is amended to read as follows:

ARTICLE 13. ECONOMIC DEVELOPMENT INCENTIVES

1-1301. Economic development incentives overview.

Kansas law provides several ways in which a city can assist developers or businesses in making improvements (e.g. construction of public infrastructure, expansions of buildings, etc.) which ultimately will benefit the city. Each of these ways is set out in Kansas statutes, and these statutes dictate what tools are available to the city, and what procedures need to be followed to determine if the city can or should assist the private developer or business. Additionally, cities in Kansas have "Home Rule Authority", which, among other things, allows cities to provide incentives that, although not specifically authorized by State statutes, they aren't prohibited either. Some examples include economic development grants, suspension, reduction, or rebates of certain types of taxes or fees, and reduced utility rates. Many of the statutory mechanisms for economic development incentives require the city to involve its Bond Counsel and/or Financial Advisor, and in most instances the city will require the applicant to deposit monies to cover these out-of-pocket fees to be charged to the city by Bond Counsel and Financial Advisor.

Use of incentives should be applied to the types of projects and locations in the community that advance the City's stated strategic objectives. The level to which incentives should be applied should consider:

- Priority of the strategic objective being furthered by the project.
- Extent of the impact made to the strategic objective by the project.
- Proportional level of investment and commitment being made by the applicant toward the project.
- Alignment with the most recent Community Housing Assessment and Targeted Industry Study.
- Extent to which there is not a related negative effect to the community.

Each of the most commonly used ways that the city can assist a developer or a business with improvements is set forth below:

(a) **Benefit Districts** are a financing and development tool whereby the city can issue general obligation bonds for construction of public improvements and then assess the cost of the improvement to properties that are benefitted by the improvement. The bonds are then retired through payment of special assessments by these benefiting properties and collected annually by the county through the property tax system. Generally speaking, Benefit Districts are used by the city to assist in development of public improvements that are needed as part of a larger development, such as arterial roadways, sidewalks, water lines, or sanitary sewers. Benefit Districts permit the construction of roads and infrastructure associated with new development without requiring established residents to pay for such new development.

(b) **Tax Increment Financing (TIF)** is a development tool which allows the city to pay a portion of redevelopment costs for a new development which is located in a city defined "redevelopment district". The "redevelopment district" can only be created in certain statutorily defined areas: (1) Blighted; (2) Conservation; (3) Enterprise Zone; (4) Intermodal Transportation; (5) Major Tourism; (6) Major Commercial Entertainment and Tourism; and (5) Bioscience Development. With a TIF, the redevelopment costs of the project are paid (or reimbursed) from all or a portion of the new incremental property and/or sales tax revenue generated by the new development. The existing property and/or sales tax revenue (prior to redevelopment) is "frozen" until the development generates sufficient revenue to pay for redevelopment costs that the city and developer of the project have previously agreed can be paid by the new revenue or until the redevelopment district expires. Under Kansas law, these redevelopment costs may go toward public infrastructure improvements, including road and utility construction, as well as demolition of existing structures, but may not go toward private building construction. By statute, a minimum level of tax mills for schools and the State are protected from being paid (i.e. diverted) toward redevelopment costs, and increment payments are limited to 20 years from approval of the project plan associated with the redevelopment. The city has complete discretion over whether and how much property tax, sales tax and other local revenues will be captured by the TIF. The city may, if requested by the developer, issue bonds supported by TIF revenues, or TIF revenues plus a general obligation pledge of the city.

(c) **Transportation Development District (TDD)** is a special taxing district whereby a petitioner, consisting of 100% of the landowners in an area, requests the city to levy special assessments or impose a sales tax of up to 1% on goods and services sold within a given area (the district). Upon creation of a TDD, the revenue generated by TDD special assessments or sales tax may pay (or reimburse) the costs of transportation infrastructure improvements in and around the new

development. The city may, upon request of the petitioner, issue bonds supported by the TDD revenues.

(d) **Community Improvement Districts (CID)** allow a property owner to petition the city to levy special assessments or impose up to an additional 2% sales tax within a designated area (the district) to pay (or reimburse) eligible project costs. These costs may include infrastructure, design, engineering, and construction-related activities. Unlike a TDD, the special assessments or sales taxes must be spent on improvements within the boundaries of the CID. The city may, upon request of the petitioner, issue bonds supported by the CID revenues.

(e) **Neighborhood Revitalization District (NRD)** allows the city to designate a geographical area or structure as a neighborhood revitalization area if the city finds the area or structure meets certain statutory criteria, mostly focusing on dilapidation, deterioration, and the need for revitalization for the health, safety, and welfare of inhabitants. The area or structure designated can be commercial or residential. Once an area or structure is designated, property owners are entitled to an annual rebate of the city's share of property taxes equal to the increase in taxes directly attributable to improvements they made to the area or structures for a period not to exceed 10 years. By statute, a minimum level of tax mills for schools are preserved from being rebated to property owners. The city may enter into agreements with other taxing jurisdictions (e.g. County, Fire District) so their taxes are also rebated to the property owner who makes improvements in the area or to the structure.

(f) **Downtown Redevelopment District (DRD)** allows the city to make application to the Kansas Secretary of Commerce to designate a downtown area (can include commercial and residential) as eligible for a rebate of the incremental increase in real property taxes (appraised value must increase by at least 25%) collected from property that has undergone approved improvements. The rebate of the increment can only extend for nine years and can equal 100% in years 1 through 5, 80% in year 6, 60% in year 7, 40% in year 8, and 20% in year 9. This tool is very similar to a Neighborhood Revitalization District but takes away the need to seek agreement by other taxing jurisdictions to include their tax increment as part of the rebate because approval by the Secretary of Commerce mandates that all taxing jurisdictions be subject to the rebate of the increment.

(g) **STAR Bonds** provide Kansas municipalities the opportunity to issue bonds to finance the development of major commercial entertainment and tourism areas and use city and state sales tax revenue generated by the development to pay off the bonds. In order to be considered a major commercial entertainment and tourism area, a proposed project must be capable of being characterized as a statewide and regional destination, and include a high quality innovative entertainment and tourism attraction, containing unique features which will increase tourism, generate significant positive and diverse economic and fiscal impacts and be capable of sustainable development over time. The Kansas Secretary of Commerce ultimately approves the use of STAR bond proceeds within a STAR Bond Project District once the District is established by a governing body. A STAR district functions much like a TIF but is enhanced by the state's contribution of its share of sales taxes. The city issues the STAR bonds which may be supported solely by STAR revenues or by a combination of STAR revenues and a general obligation pledge of the city.

(h) **Constitutional Tax Abatements** are permitted pursuant to Kansas statutes and the State Constitution. Cities may provide qualified businesses an exemption of up to 100% of property taxes, for a period not to exceed 10 years, on the land where a new business or expansion of a business is built. In general, the only businesses eligible for constitutional tax abatements are those involved in (1) manufacturing; (2) research and development; and (3) interstate warehousing. Tax abatements are not permitted for any retail business, thus no component of an abated project can involve retail.

(i) **Industrial Revenue Bonds (IRBs)** can be issued by cities to provide financing for a wide range of private business facilities. The two most common scenarios where IRBs are issued are: (1) in connection with a tax abatement, and (2) in connection with a commercial development to purchase construction materials and/or personal property for a new or expanded facility, which then allows for materials and personal property to be purchased exempt from sales tax. If IRBs are issued in connection with a tax abatement, title to the abated facility generally is conveyed or leased to the city and then leased back to the business, but only for as long as the IRBs are still outstanding. Significantly, issuance of IRBs does not affect the city’s credit or indebtedness rating.

(j) **“Home Rule Authority” Incentives** are not necessarily statutory based but can be offered by cities if the incentive is not specifically prohibited by a State statute. This category of incentives is sort of a catch-all and is considered by the city in very limited circumstances, on a case by case basis, and typically will require a Development Agreement. Examples of these incentives that may be considered by the city are as follows:

1. Excise Tax: For residential development, suspension, reduction, or waiver of the excise tax on the act of platting and building within the city (See City Code, Chapter XVI, Art. 6).
2. Economic Development Grant: Financial assistance provided by the city for the purpose of economic development.
3. Property Tax Rebate: Reimbursement by the city, for economic development purposes, of all or a portion of city assessed property taxes.
4. Permit Fees: Suspension, reduction, or waiver of certain city-imposed fees, for the purpose of economic development.
5. Utility Rates and Charges: Suspension or reduction of certain rates or charges for city provided utilities.
6. Special Neighborhood Improvement District (“NID”): Allows City Administrator to reduce or exempt projects in specified areas from imposition of excise taxes, building permit fees, and/or city utility connections. This incentive is specifically set out in Article 15 of Chapter I of this City Code.

(Ord. 2361; Ord. 2408)

1-1302. Criteria for economic incentives.

Whether the city is able to grant or approve one or more of the above economic incentives is largely controlled by applicable Kansas statutes and Constitutional provisions and is discretionary with the governing body of the city. However, above and beyond the question of whether the city is legally able to grant certain economic incentives, there are certain policy considerations the city will consider when exercising its discretion on whether to approve an economic incentive.

The city will apply the maximum level of incentives available, in all forms, to projects that specifically and definitively advance the city’s community objectives. The applicant shall align incentive requests with specific elements of the City’s Strategic Plan and this incentive philosophy. The governing body will determine the level to which project objectives align with city philosophy and align incentive recommendations appropriately.

The quality of schools in the community are considered a strategic asset. Therefore, applications for incentives will seek to hold the school district harmless from tax deferment decisions and avoid a negative impact to school district funding based on the type of development for a particular project and its impact on the school system.

Subject to any legal requirements, the following considerations or criteria will be weighted, considered, and/or disregarded as inapplicable, depending on the particular application for economic incentives and circumstances of the project, and all within the discretion of the city:

(a) **Specific Locations.** Various locations within the City, and within the City's extraterritorial planning jurisdiction, have been identified as aligning with the Strategic Plan and the Comprehensive Plan. These areas are indicated on the Incentive Priorities Map, attached as **Exhibit A**. The locations are areas where development or redevelopment are being promoted and encouraged. The map represents areas where the maximum level of incentives may be requested and the areas where intermediate levels of incentives may be applied. Areas outside of those identified on the attached map are of lesser priority for economic development. Incentives in these areas may be granted, but will generally be at lower levels, or shorter terms. Incentives may be allowed for projects that do not definitively accomplish the city's strategic objectives but will be considered at lower levels of years of deferment or percentages of deferment. No incentives will be allowed for projects which are not aligned with the Incentive Priorities Map, or this philosophy.

(b) **Maintain Existing Tax Base.** Granting of the application shall not result in the city, county, school district, or any other taxing jurisdiction affected by the incentive, receiving less tax revenue from the property than was received prior to the incentive.

(c) **Existence of Economic Benefit.** There is a clear demonstration of public purpose and economic benefit to the city through the advancement of the governing body's economic goals which can be established by, but are not limited to, such things as additional quality jobs; increased private capital investment; expanded tax base; importing new wealth into the city; exporting goods from the city; spurring economic development in targeted city locations; and encouraging development of targeted businesses desirable to enhance the city's local economy.

(d) **"But For" Principle.** The incentive should make such a difference to the project that, without the requested incentive, the project will not proceed within the city. A feasibility study as to the project, the requested incentive and the satisfaction of this "but for" test may be required by the city from the applicant, with review by the city's Financial Advisor.

(e) **Unfair Competition.** The incentive should not, in the determination of the governing body, create an unfair advantage for one business over another competing business within the city unless there is a substantial overriding benefit to the city as a whole.

(f) **Employment.** For any jobs that will be created because of the incentivized project, the employees performing those jobs will be paid an average wage per employment category that meet or exceeds the average in the Kansas City Metropolitan Area as determined annually by the Kansas Department of Human Resources Wage Survey.

(g) **Targeted Industries and/or Areas.** The project must be a targeted industry and/or located in an area targeted by the governing body for economic development or redevelopment; or has specific site constraints making development more difficult or costly. The current targeted industries include life science/life science support, manufacturing (medical equipment and supplies manufacturing),

logistic services/wholesale (packaging and distribution), food processing equipment/commercial equipment merchant wholesalers, administrative service centers/back office, corporate office and research centers. Targeted areas include Commerce Park, Lexington Avenue and the downtown area.

(h) **Cost Benefit/Feasibility Analyses.** A cost/benefit and/or feasibility analysis as to the requested incentive may be required, and will be performed by the city's Financial Advisor, or an outside advisor designated by the city, or by an advisor retained by the applicant and then reviewed by the city's Financial Advisor. The applicant is required to provide all information requested by the City or its advisors necessary to complete this analysis. The result of the analysis should indicate that the benefit of the project, improvement, or establishment, expansion or relocation of the applicant's business, even with the proposed incentive, outweighs the cost to the city and other affected taxing jurisdictions, unless the project meets other goals or priorities of the city.

(i) **Community Involvement.** The governing body places a high priority on the city's businesses being involved in the community and community groups. In considering an application for an economic incentive, the governing body will expect a commitment from the applicant to become involved in the community and to encourage its employees to do the same. The governing body may request that commitments to become involved in the community be memorialized in an agreement between the city and applicant.

(j) **Impact Contributions.** An applicant's willingness to assist the city in addressing impacts of the business locating, or expanding, in the city -- and agreeing to address such issues in an agreement -- will be considered by the governing body when determining whether to grant an economic incentive to the applicant. Examples include, but are not limited to, specialized fire prevention equipment, additional traffic control devices or measures, higher than required spending on building design and landscaping, and increased maintenance of infrastructure in proximity to the business.

(k) **Pirating.** The City discourages applications for economic incentives which deliberately encourage and cause the pirating of business from one Kansas community to another. The City intends to avoid participation in "bidding wars" between cities or areas competing for the location of new businesses or expansion of existing businesses through attempts to offer the largest economic incentives, which is detrimental to the State's economy and the public interest.

(l) **Incentive Level Matrix.** The Incentive Level Matrix, attached as **Exhibit B**, will be the basis for determining eligibility and extent of incentives considered for each of the Incentive Areas shown on the Incentive Priorities Map.

(m) **Limitations.** Situations where incentives will not be considered, or will be reduced, include:

- Residential projects not in the downtown district which do not provide quality affordable housing and do not accomplish in-fill or redevelopment opportunities.
- Where the City has made recent capital investment in infrastructure such investment will be considered an incentive itself and will be considered when evaluating incentive requests. This consideration may include an analysis of the costs of infrastructure investment compared to the economic benefit of the proposed development and the future development of areas served by the infrastructure.
- Projects where the investment in infrastructure accomplished by the incentive does not benefit surrounding property or other community opportunities.

1-1303. Criteria specific to tax abatements.

In addition to the criteria set forth in Section 1-1302, the following criteria will be considered by the city when presented with an application for a tax abatement:

(a) **Capital Investment.** An applicant establishing a new business should be making a minimum capital investment in the city of at least \$5,000,000. An applicant expanding an existing business, defined to be any business that has a significant physical presence within the city as an owner or tenant, should be making a capital investment in the city of at least \$1,000,000. The term capital investment shall apply to the acquisition cost of land and building improvements but shall not include tangible personal property constituting capital assets for accounting purposes.

(b) **Duration and Amount of Abatement.** Application of the criteria set forth in Sections 1-1302 and 1-1303 will be considered in determining whether an abatement should be given to the applicant and, if so, the length and amount of abatement granted. In no event shall an abatement exceed ten (10) years.

(c) **Special Assessments.** A tax abatement shall not affect the liability of such property for any special assessments levied or to be levied against such property.

(Ord. 2361; Ord. 2408)

1-1304. Procedures for economic incentives.

Many of the economic incentives described in Section 1-1301 require compliance with statutory procedures specific to the incentive requested. The below procedures are not intended to supplant or modify those statutory procedures, but rather are intended to provide the applicant a framework for having a requested incentive considered by the city.

(a) **Initial Meetings.** The applicant will first have a telephone or in-person meeting with the city administrator to discuss the general nature of a project and/or the economic incentive requested. The city administrator will thereafter advise the applicant of any required future meetings with the city administrator and/or the city's Finance Team. The city's Finance Team generally will be the mayor, the city administrator, and the director of the local Economic Development Corporation. Depending on the project and economic incentives requested, the Finance Team may be expanded to include representatives of the city governing body, city attorney, city Financial Advisor, and city Bond Counsel.

(b) **Funding Agreement.** If the project or economic incentive requested will require the services of the city's Financial Advisor and/or Bond Counsel or any other out of pocket fees and expenses by the city to consider the applicant's project or requests, the applicant will be required to agree to a Funding Agreement with the city whereby the applicant agrees to deposit and replenish an escrow fund to cover the city's out of pocket costs directly attributable to the applicant's application and/or request for economic incentives.

(c) **Formal Application.** The City's uniform application for economic incentives (attached as **Exhibit C** – but may be amended from time to time by the city administrator) will be completed and submitted by the applicant to the city clerk. After receipt of the application, the city administrator may

convene additional meetings with the applicant and/or with the Finance Team to discuss the project, economic incentives, and/or the application submitted.

(d) **Presentation to the Governing Body.** The applicant will be given an opportunity to present information about their project, and/or economic incentives requested, to the city governing body. The presentation may be in the form of a workshop or as part of a regularly scheduled city governing body meeting. The city administrator, with the assistance of other city staff, will present information and recommendations developed as part of meetings with the applicant and/or with the Finance Team.

(e) **Presentation of Feasibility and/or Cost/Benefit Analysis.** After the initial meetings and formal application, the city administrator will determine whether a feasibility study and/or cost benefit analysis will be required by the applicant, and will indicate to the applicant if the study or analysis needs to be completed before or after presentation to the governing body. Unless otherwise directed by the city administrator, the applicant will submit any feasibility studies to the city for review by the city Financial Advisor, and any cost/benefit analyses will be conducted by the city Financial Advisor based on project information provided by the applicant. The applicant will timely provide any additional information requested by the city in order to complete such analyses.

(Ord. 2361; Ord. 2408)

1-1305. Procedures specific to tax abatements.

Kansas law requires that an official policy and procedure be adopted by the city for the granting of tax abatements. The within policy and procedure shall constitute said official policy and procedure and, in addition to the above noted criteria and procedures, the following will be required:

(a) **Cost/Benefit Analysis.** The city's Financial Advisor will complete and submit to the city governing body a cost/benefit analysis of the abatement requested by the applicant as required by Kansas law, and said analysis will include the effect of the abatement on all taxing jurisdictions that will be affected by the abatement, including the State of Kansas.

(b) **Public Hearing and Notice.** No sooner than seven days after an official notice of hearing is published, and the governing bodies of the school district and county where the property to be exempted is located have been provided written notice of the hearing, the city will hold a public hearing on whether to grant the requested tax abatement.

(c) **Resolution.** Before making a decision to grant a constitutional tax abatement, the governing body shall adopt a resolution finding that the property being considered for exemption is to be used exclusively for an Article 11, §13 purpose (e.g. manufacturing, research and development, or storing of goods traded in interstate commerce). If the business is relocating within the state, the resolution will state that the secretary of commerce has determined that such relocation is necessary to prevent the business from leaving the state.

(d) **Payment in Lieu of Tax (PILOT) Agreement.** The level and time period for any tax abatement, and any other conditions or agreements between the city and the applicant, will be set forth in and agreed to by the applicant in a PILOT Agreement. The PILOT Agreement will be considered by the city governing body in connection with considering an ordinance granting the abatement.

(e) **Ordinance.** After the public hearing, and in the event the governing body decides to grant the abatement, an ordinance memorializing the granting of the abatement shall be adopted by the governing body.

(f) **Approval by Board of Tax Appeals.** After the granting of an abatement by the city governing body, the applicant is responsible for seeking approval of the abatement by the Kansas Board of Tax Appeals. Approval by the city of an abatement is not a warranty or representation that the Kansas Board of Tax Appeals will approve the abatement.

(g) **Compliance.** An application for annual review shall be filed on an annual basis with the city clerk no later than January 15 of each year for the term of the abatement. The filing fee shall be \$1,000 per year and is non-refundable. Upon the filing of an application for renewal, the constitutional tax abatement will be reviewed by city staff to ensure the property continues to be used exclusively for an Article 11, §13 purpose, to ensure that the applicant is in compliance with all terms and conditions of the PILOT Agreement, and to calculate any decreases in the abated percentages due to the applicant's failure to meet requirements of the PILOT Agreement. If a certificate of compliance is issued by the city, it shall be the applicant's responsibility to claim the appropriate tax abatement by submitting the appropriate forms to the county appraiser by March 1. The claim form shall include a written statement, signed by the city clerk, that the property continues to meet all terms and conditions established as a condition of granting the abatement.

(h) **Revocation.** The governing body reserves the right to revoke a previously approved tax abatement as a result of a fraudulent or inaccurate application; failure to submit the annual review application and supporting information; failure to meet qualifying criteria; failure to comply with established terms or conditions; or failure to comply with an approved PILOT agreement.

(Ord. 2361; Ord. 2408)

1-1306. Development agreement.

Recognizing that many economic development projects may include layered incentives, the city may require the applicant to enter into a development agreement, setting forth the specific incentives to be granted, the specifics of the applicant's duties in constructing the development and any ongoing responsibilities of the applicant. As part of such development agreement, the city may impose conditions on the applicant's continued qualification for any incentives and may levy additional fees as necessary to administer such agreement. The city will cause the development agreement to be drafted at the applicant's cost. The final development agreement will be subject to approval of the city's governing body.

(Ord. 2361; Ord. 2408)

1-1307. Discretion; waiver.

To the extent allowed by law, the governing body reserves authority and the discretion to waive any or all of the requirements, criteria, or procedures set forth in this Article.

(Ord. 2361; Ord. 2408)

SECTION 2: Repealer. Upon the effective date of this Ordinance, the City's existing Article 13 of Chapter I is hereby repealed.

SECTION 3: Effective Date. This Ordinance shall be effective after its passage, approval and publication once in the City's official paper.

ADOPTED BY THE GOVERNING BODY AND APPROVED BY THE
MAYOR OF DE SOTO, KANSAS ON THE 15th DAY OF OCTOBER 2020.

RICK WALKER, Mayor

ATTEST:

LANA MCPHERSON, MMC, City Clerk

APPROVED AS TO FORM:

PATRICK G. REAVEY, City Attorney